

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY M. MARKS and U.S. POSTAL SERVICE,
POST OFFICE, Suitland, Md.

*Docket No. 97-776; Submitted on the Record;
Issued May 6, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that an overpayment of compensation of \$1,206.22 had been created during the period May 28, 1995 to April 27, 1996; and (2) whether the Office properly refused waiver of the overpayment.

In the present case, the Office accepted that appellant sustained right shoulder tendinitis and acromioclavicular arthritis in the performance of duty on March 20, 1985. The Office also accepted an occupational claim for carpal tunnel syndrome. In a letter dated May 22, 1996, the Office advised appellant that a preliminary determination had been made that an overpayment of \$1,206.22 had occurred during the period May 28, 1995 to April 27, 1996. The Office found that during this period appellant was paid compensation based on a pay rate in effect on November 16, 1988, rather than the pay rate in effect on March 20, 1985. With regard to fault, the Office found that appellant was without fault, and if she sought waiver of the overpayment, she should submit the overpayment questionnaire and any supporting documents. By decision dated October 16, 1996, the Office finalized the finding of an overpayment in the amount of \$1,206.22.

The Board has reviewed the record and finds that the case is not in posture for decision.

The issue of appellant's pay rate was considered by the Board in a companion appeal docketed as 96-460.¹ The Board found that the record required further development as to the proper "monthly pay" under 5 U.S.C. § 8101(4) to be used in calculating appellant's compensation. Since the declared overpayment of compensation in this case is based on the use of an improper pay rate, the Board finds that the case is not in posture for decision at this time. On remand the Office should resolve the pay rate issue in accordance with the Board's decision

¹ Issued April 20, 1998.

in Docket No. 96-460. Once the proper pay rate for compensation purposes is determined, the Office may then determine if an overpayment of compensation has been created.

The decision of the Office of Workers' Compensation Programs dated October 17, 1996 is set aside and the case remanded to the Office for further proceedings.

Dated, Washington, D.C.
May 6, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member